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No. 96-

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1996

T. S. LIN,
Petitioner,
VS.
SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
Respondent.
and
CAROL KO, FREDDY KO, REBECCA LIU, THOMAS SHEN
and DANIEL SUN,
Real Parties In Interest.

On Petition for Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Whether, under the "fiduciary shield" doctrine or otherwise, the Due Process Clause of the Fourteenth Amendment is violated when a court exercises personal jurisdiction over a foreign or nonresident officer or director of a foreign or nonresident corporation based solely on acts taken in his or her capacity as an officer or director for the benefit of the corporation.[1]

(2) Whether, under the "fiduciary shield" doctrine or otherwise, the Due Process Clause of the Fourteenth Amendment is violated when a court exercises personal jurisdiction over a foreign or nonresident officer or director of a foreign or nonresident parent corporation based solely on acts taken in his or her capacity as an officer or director for the benefit of the parent corporation, where the challenged actions of the officer or director consist, at most, of those taken in management or oversight of the subsidiary.

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[1] In this Petition, the term "foreign officer or director" refers to an officer or director who is a citizen and resident of a foreign country. The term "nonresident officer or director" refers to an officer or director who is not a resident of the forum state (or state where the federal district court sits). The term "foreign corporation" refers to a corporation that is incorporated and has its principal place of business in a foreign country. And the term "nonresident corporation" refers to a corporation that is incorporated and has its principal place of business in a state other than the forum state (or state where the federal district court sits). This Petition does *not* address the application of the "fiduciary shield" doctrine, or of due process, to the issue of jurisdiction over officers and directors of domestic corporations — those incorporated or having their principal place of business in the forum state (or state where the federal district court sits).

PARTIES TO THIS PROCEEDING

The names of all parties to this proceeding are contained in the caption of this case. Petitioner is an individual, not a corporate entity. *See* Supreme Court Rules 14.1(b) and 29.6.

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On Petition for Writ of Certiorari to the Supreme Court of the State of California

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PETITION FOR WRIT OF CERTIORARI

Petitioner Ting-Sheng Lin ("Lin") petitions for a writ of certiorari to review the final order of the California Supreme Court entered on October 30, 1996. The order denied review of Lin's petition for writ of mandate to direct the California Superior Court for the County of Los Angeles to quash service of summons on a cross-complaint, on the grounds that under the "fiduciary shield" doctrine, California could not constitutionally assert personal jurisdiction over Lin based solely on acts he took in his capacity as Chief Executive Officer and Chairman of the Board of Tatung

Company, a Taiwan electronics manufacturer.[2] Petitioner Lin is a resident and citizen of Taiwan.

OPINIONS BELOW

Neither the California Court of Appeal, Second District, nor the California Supreme Court issued an opinion in this case. The California Court of Appeal's order denying Lin's petition for writ of mandate is included in the Appendix. (App. at 1a), as is the California Supreme Court's October 30, 1996 order denying review of this decision. App. at 2a. The relevant portions of the California Superior Court's oral ruling on Lin's motion to quash service of summons appear in the Appendix as well. App. at 3a-7a.

JURISDICTION

The California Supreme Court issued its order denying review of Lin's petition for writ of mandate on October 30, 1996. That order became final immediately. This Court has jurisdiction under 28 U.S.C. § 1257(a) (1988).

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[2]The plaintiff in the action below is Tatung Company of America, Inc. ("Tatung America"), a partially owned subsidiary of Tatung Company, a Taiwan corporation ("Tatung Taiwan"). Petitioner Lin is the Chairman of the Board and Chief Executive Officer of Tatung Taiwan. He is neither an officer nor director of Tatung America. In response to Tatung America's claims against them below, real parties in interest asserted cross-claims against Tatung Taiwan and Lin, who were not originally parties to the action. Tatung Taiwan has not contested jurisdiction.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Section 1 of the Due Process Clause of the Fourteenth Amendment:

> . . . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . .

U.S. Const. amend. XIV, § 1.

California Code of Civil Procedure Section 410.10 states:

> A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

Cal. Civ. Proc. Code § 410.10 (West 1973).

STATEMENT OF THE CASE

The "fiduciary shield" doctrine provides that foreign or nonresident officers and directors of a foreign or nonresident corporation — as opposed to the corporation itself — cannot, consistent with the due process clause of the Fourteenth Amendment, be subject to personal jurisdiction where their *only* contacts with the forum consist of acts, related to the claim at issue, taken solely on behalf of the corporation on whose board they serve.[3]

The federal Courts of Appeals, as well as various state high courts, are in conflict over the propriety of this doctrine. This Petition asks this Court to resolve the split of authority on this due process issue: (1) Whether a forum court may, consistent with due process, assume personal jurisdiction over a foreign or nonresident officer or director of a foreign or nonresident corporation where the *only*

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[3] In some jurisdictions, the doctrine may also apply to officers and directors of domestic corporations. Such applications of the doctrine are, however, not at issue on this Petition. *See* note 1 *supra*.

relevant acts of the officer or director having connection with the forum are acts taken in an official corporate capacity; and (2) Whether a forum court may, consistent with due process, assume personal jurisdiction over a foreign or nonresident officer or director of a foreign or nonresident parent corporation of a resident subsidiary based solely on acts taken in his or her capacity as an officer or director for the benefit of the parent corporation.

This issue is of fundamental concern to the many individuals who serve as officers and directors of corporations, particularly foreign corporations, that conduct business in many states. It is also of particular import to corporate officers and directors, like Petitioner Lin, who are foreign nationals who sit on the boards of foreign parent corporations, and whose alleged wrongful conduct consists only of acts taken, in their official capacity, in connection with a parent corporation's oversight of its domestic subsidiary. As this Court has recognized, due process mandates particular caution when a court considers exercising jurisdiction over a foreign national, who will thereby be forced to defend himself or herself in a foreign legal system. *See Asahi Metal Ind. v. Superior Court,* 480 U.S. 102, 114-15, 107 S. Ct. 1026, 1033-34 (1987).

Application of the "fiduciary shield" doctrine does not leave plaintiffs without a remedy. As in this case, plaintiffs are free to proceed against the domestic subsidiary that has allegedly caused them harm. And if sufficient contacts with the forum can be shown, plaintiffs may also obtain jurisdiction over the foreign parent of that corporation.

In this action, despite California appellate authority supporting application of the "fiduciary shield" doctrine,[4] the courts below failed to apply the doctrine. On behalf of Petitioner Lin, and the many other similarly situated corpo-

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[4] *See* note 12 *infra.*

rate officers and directors, this Court should take this opportunity to resolve the conflict in the federal circuit courts, and in the high courts of various states, on this important due process issue.

A. STATEMENT OF FACTS

Petitioner Lin is a resident and citizen of Taiwan. Declaration of T.S. Lin ("Lin Decl."), Appendix to Writ Petition ("Writ App.") at 108:8-9. He is the Chairman of the Board and Chief Executive Officer of Tatung Company, a Taiwan electronics manufacturer ("Tatung Taiwan"). *Id.* at 105:3-4. Tatung Company of America, Inc. ("Tatung America") is a partially owned California subsidiary of Tatung Taiwan. *Id.* at 105:24-25. In late 1992, through written communications sent by facsimile from Taiwan, Petitioner Lin suggested that defendant Chieh Sun, then president of Tatung America, terminate the employment of a group of Tatung America employees who worked for a separate company while on Tatung America's payroll. *Id.* at 106:25 to 107:10. Petitioner Lin made these recommendations solely in his capacity as an officer of Tatung Taiwan (a 50% shareholder in Tatung America), for the protection of both Tatung Taiwan and Tatung America. *Id.* at 106:25 to 107:27.

Real Parties in Interest Carol Ko, Freddy Ko and Rebecca Liu, defendants below, allege that as a result of Petitioner Lin's requests, Tatung America breached alleged employment contracts with them. They have cross-complained against Lin and Tatung Taiwan for allegedly wrongfully inducing the breach of these alleged contracts. *E.g.*, Carol Ko Cross-Complaint, Writ App. at 8:7 to 9:12. Tatung Taiwan has, without contesting jurisdiction, appeared below and answered these cross-claims.

In addition, Real Parties in Interest Thomas Shen and Daniel Sun, as minority shareholders of Tatung America, have asserted shareholder derivative claims against Tatung

Taiwan and claims against Lin for allegedly defrauding Tatung America. These claims allege that between 1981 and 1994, Tatung America recorded in its books over $12 million as a purported "account receivable" from Tatung Taiwan, and seek to enforce this alleged receivable. *E.g.*, Thomas Shen Cross-Complaint, Writ App. at 6:16 to 8:7; Daniel Sun Cross-Complaint, Writ App. at 52:6 to 56:6. Below, Tatung Taiwan has also appeared and responded to these claims.

B. PROCEDURAL HISTORY

Petitioner Lin timely filed motions to quash service of summons on the cross-complaints, on the ground that California could not constitutionally assume personal jurisdiction over him. While the Superior Court ruled that Petitioner Lin was not subject to general jurisdiction, it denied Lin's motion to quash, finding that specific jurisdiction existed. App. at 4a. The Superior Court rejected the "fiduciary shield" doctrine, and imputed Lin's acts, taken solely in his capacity as an officer and director of Tatung Taiwan, to Lin personally. *See id.* The California Court of Appeal denied Lin's petition for a writ of mandate. App. at 2a. The California Supreme Court then denied Lin's petition for review of the Court of Appeal's decision. App. at 1a. This Petition seeks review of that decision.

REASONS FOR GRANTING THE WRIT

I.

THIS PETITION PRESENTS A FUNDAMENTAL DUE PROCESS ISSUE, INVOLVING THE "FIDUCIARY SHIELD" DOCTRINE, THAT HAS NOT BEEN, BUT SHOULD BE, RESOLVED BY THIS COURT

This Petition presents significant constitutional issues affecting thousands of individuals: whether the due process

clause of the Fourteenth Amendment is violated when a state or federal court asserts personal jurisdiction: (a) over foreign or nonresident officers and directors of a foreign or nonresident corporation based solely on their actions taken on behalf of the foreign corporation; or (b) over a foreign or nonresident officer or director of a foreign or nonresident parent corporation based solely on acts taken in his or her capacity as an officer or director for the benefit of the parent corporation. Under the "fiduciary shield" doctrine, a court cannot consistent with due process exercise personal jurisdiction over an individual based on acts taken in the individual's capacity as an officer or director for the benefit of the corporation for whom he or she acts. *See, e.g., Wilshire Oil Co. v. Riffe,* 409 F.2d 1277, 1280-83 (10th Cir. 1969).

Over fifty years ago, this Court held that due process requires that a defendant have minimum contacts with a forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co., v. Washington,* 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945), *quoting Milliken v. Meyer,* 311 U.S. 457, 463, 61 S. Ct. 339, 342 (1940). The reasonableness of a court's assertion of jurisdiction over a foreigner or nonresident is subject to different tests depending on whether the forum court is attempting to exercise "general jurisdiction" or "specific jurisdiction" over the nonresident.

General jurisdiction exists if a foreign or nonresident defendant's activities connected with the forum are "continuous and systematic." *Helicopteros Nacionales De Colombia v. Hall,* 466 U.S. 408, 414-415, 104 S. Ct. 1868, 1872 (1984). If so, jurisdiction exists for all causes of action asserted against the nonresident defendant; it is not necessary that the specific cause of action alleged arises out of or relates to the defendant's contacts with the forum. *Id.*, 466 U.S. at 414, 104 S. Ct. at 1872.

But if a foreign or nonresident defendant's activities within a forum are not sufficient to warrant the exercise of general jurisdiction, the jurisdictional issue is evaluated with reference to the particular transactions or events underlying the plaintiff's claims. The exercise of "specific jurisdiction" requires that: (1) a defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws[ ]" (*see Hanson v. Denckla,* 357 U.S. 235, 253, 78 S. Ct. 1228, 1239-40 (1958)); (2) the cause of action be related to or "arises out of" a defendant's contacts with the forum (*see Helicopteros, supra,* 466 U.S. at 414, 104 S. Ct. at 1872); and (3) the exercise of jurisdiction be reasonable (*see Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 476-77, 105 S. Ct. 2174, 2184-85 (1985)).

The "fiduciary shield" doctrine is a subset of the test for the exercise of specific jurisdiction over a defendant who is a corporate officer or director. The doctrine recognizes that acts taken by nonresident individuals in their capacity as officers or directors are generally not personal, but rather corporate, acts. As such, they do not amount to purposeful availment by corporate officers or directors as individuals — as opposed to the corporation — of the benefits and protections of the forum. *See Wilshire Oil, supra,* 409 F.2d at 1281; *Arkansas Rice Growers v. Alchemy Indus., Inc.,* 797 F.2d 565, 574 (8th Cir. 1986) ("The law is clear that a corporate officer or agent who has contact with the forum state only with regard to the performance of corporate duties does not thereby become subject to jurisdiction in his or her individual capacity.") (citations omitted).

Many courts that have applied the "fiduciary shield" doctrine have held that it is an expression and function of due process. *E.g., Weller v. Cromwell Oil Co.,* 504 F.2d 927, 929 (6th Cir. 1974); *Wilshire Oil Co. v. Riffe,* 409 F.2d 1277, 1280-1283 (10th Cir. 1969); *Saktides v. Cooper,* 742

F. Supp. 382, 385 (W.D. Tex. 1990); *Bowers v. NETI Technologies, Inc.*, 690 F. Supp. 349, 357-59 (E.D. Pa. 1988). *See also Columbia Briargate Co. v. First Nat'l Bank*, 713 F.2d 1052, 1064 (4th Cir. 1983) (due process violated when personal jurisdiction exercised over corporate agent whose only connection with a plaintiff's claim is activity taken in corporate capacity and outside forum), *cert. denied*, 465 U.S. 1007, 104 S. Ct. 1001 (1984).

Invocation of the "fiduciary shield" doctrine is particularly apt — and should be compelled by due process — where, as in this case: (1) the officer or director defendant is not only a nonresident of the forum, but also a foreign national with insufficient contacts with the forum (or, indeed, the United States) to give rise to general jurisdiction; (2) the corporation on whose board the officer or director defendant serves is a foreign corporation; and (3) the challenged actions of the officer or director defendant are, at most, only those taken in management and oversight of the foreign corporation's domestic subsidiary.

Were it not for the "fiduciary shield" doctrine, an officer or director (such as Petitioner Lin here) of a foreign corporation with a United States subsidiary (such as Tatung Taiwan here) would be subject to suit anywhere in the United States whenever a disgruntled employee, shareholder or other individual or entity with a grievance directly against one of its subsidiaries asserts a claim that the officer or director allegedly interfered with an employment contract, or committed some other tort, solely by virtue of making a telephone call or sending a letter to its subsidiary.[5] Tradi-

[5] *Cf. Weller v. Cromwell Oil Co.*, 504 F.2d 927, 931 (6th Cir. 1974) (stating that if personal jurisdiction is asserted over nonresident officers of national corporations based on their activities as corporate officers, "the individuals could be sued in every state of the union whenever they make telephone calls or write letters to a customer who claims that they constitute misrepresentations.").

tional notions of fair play and substantial justice would be violated by subjecting such officers and directors of foreign corporations to personal jurisdiction when, in their official capacities, they simply provide management oversight and direction of a domestic subsidiary — which is the *most* that can be said of Petitioner Lin's alleged activities at issue here.[6] Under such circumstances, it cannot be said that the defendant foreign officer or director of a foreign parent corporation has "purposefully avail[ed] . . . itself of the privilege of conducting activities with the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, *supra*, 357 U.S. at 253, 78 S. Ct. at 1239-40.

This Court has never directly addressed the "fiduciary shield" doctrine and its application to the due process issue of whether personal jurisdiction may permissibly be assumed over foreign or nonresident officers or directors of a foreign or nonresident corporation (or parent corporation) based on acts taken in their corporate capacities (whether on behalf of the corporation alleged to have directly committed a wrong, or on behalf of the parent corporation).

However, in *Calder v. Jones*, 465 U.S. 783, 790, 104 S. Ct. 1482, 1487-88 (1984), this Court did analyze the propriety of the assumption of jurisdiction in California over two *employees* of the National Enquirer whose alleged contacts with California consisted of writing and editing a libelous article about a California resident. This Court

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[6]Petitioner Lin contends that, as Chairman and Chief Executive Officer of Tatung Taiwan, he did *not* in fact have authority to direct or control the actions of its subsidiary, Tatung America. This issue — along with other liability issues, including the limited circumstances under which an officer and director of a parent may be held legally responsible for a subsidiary's acts, and the limited circumstances under which a corporate officer or director may be held individually responsible for a corporation's acts — are liability issues not relevant to the jurisdictional issue raised by this Petition.

upheld the exercise of jurisdiction. It is true that one of the defendant employees was also an officer of the National Enquirer. But *Calder* did not address the "fiduciary shield" doctrine, or the relevance to the jurisdictional issue of that employee's status as a corporate officer. This is not surprising, because the jurisdictional contacts at issue in *Calder* were acts taken by the employee defendants in the course and scope of their duties as employees, *not* acts taken in the capacity of a corporate director or officer in the exercise of fiduciary duties to the corporation. Thus, this Court concluded that the individual defendants' "status as *employees* does not somehow insulate them from jurisdiction." 465 U.S. at 790, 104 S. Ct. at 1487-88 (emphasis added).[7]

Consistent with *Calder,* key differences between the duties of corporate employees on the one hand, and corporate officers and directors on the other, support applying the "fiduciary shield" doctrine to the latter. A corporate employee's duties are generally narrow and focused, and *not* of a fiduciary character. Unlike a corporate officer or director, a corporate employee's required actions are ordinarily constrained by the limited nature and scope of his or her job responsibilities. By contrast, a corporate officer or director acts as a fiduciary of the corporation in setting corporate policy, which most often is broad-based and impacts a wide range of the corporation's activities. Absent the "fiduciary shield" doctrine, the necessity for this type of action on behalf of corporations may well, because of the wider effects of corporate management and oversight decisions, subject

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[7]In a companion case, *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 104 S. Ct. 1473 (1984), this Court analyzed the issue of jurisdiction over a corporate defendant (Hustler Magazine, Inc.). With respect to the individual defendant (Larry Flint), this Court noted that under *Calder,* acts that he took in his official capacity as an *employee* would not for that reason be insulated from consideration in connection with the jurisdictional analysis. *Id.*, 465 U.S. at 781 n.13, 104 S. Ct. at 1481-82 n.13.

corporate officers or directors to jurisdiction in any of the many jurisdictions in which the impact of such actions may be felt.[8]

The due process underpinnings of the "fiduciary shield" doctrine are even more significant where, as here, the non-resident defendant is a foreign national, with no material non-business contacts with the forum, who serves as officer and director of a foreign corporation. As this Court has held "[t]he unique burdens placed upon one who must defend oneself in a *foreign* legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Asahi Metal Ind. v. Superior Court, supra,* 480 U.S. at 114, 107 S. Ct. at 1033 (emphasis added). Thus, "'[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.'" *Id.,* 480 U.S. at 115, 107 S. Ct. at 1034 (citation omitted). Surely, this Court's admonitions of caution regarding the assumption of jurisdiction over foreign nationals are of even greater force where, as here, the individual foreign defendant is the officer or director of a foreign parent corporation, whose allegedly wrongful acts consist — at most — of those taken in management and oversight of a domestic subsidiary.

Finally, the "fiduciary shield" doctrine does not deprive a plaintiff of the ability to secure redress for alleged corporate wrongs. Instead, the due process concerns addressed by the doctrine apply *only* to corporate officers and directors, not to the corporation itself. As this case illustrates, the corpora-

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[8]The courts that have rejected the "fiduciary shield" doctrine based on this Court's decision in *Calder* have not focused on the distinction between corporate officers and directors on the one hand, and employees on the other. *See, e.g., Davis v. Metro Productions, Inc.*, 885 F.2d 515, 521 (9th Cir. 1989); *In re Application To Enforce Subpoenas Duces Tecum*, 87 F.3d 413, 418 (10th Cir. 1966); *Estabrook v. Wetmore*, 529 A.2d 956, 958-59, 129 N.H. 520 (N.H. 1987).

tion whose alleged wrongdoing is directly at issue on a plaintiff's claims is fully subject to jurisdiction in the forum where the alleged wrongs took place (as well as in other fora). And, if it has sufficient contacts with the forum, a parent corporation that allegedly has participated in the subsidiary's alleged wrongdoing may also be subject to jurisdiction.[9] It is *only* jurisdiction over corporate officers and directors — and here *only* those of a foreign parent corporation — that the "fiduciary shield" doctrine precludes.

This Court should grant certiorari to resolve the important due process issues implicated by the "fiduciary shield" doctrine. Consistent with due process, the Court should reverse the decision by the California courts to exercise jurisdiction over a foreign national whose only relevant contacts with California consist of business actions, taken in his capacity as Chairman and Chief Executive Officer of a foreign parent corporation, that at most was exercising management and oversight of its domestic subsidiary that allegedly directly acted wrongfully.

II.

THERE IS SUBSTANTIAL CONFLICT AMONG THE FEDERAL CIRCUIT COURTS, AND AMONG STATE HIGH COURTS, REGARDING THE "FIDUCIARY SHIELD" DOCTRINE

This Court should also grant certiorari in order to resolve the conflict among federal and state courts regarding the application of the "fiduciary shield" doctrine.

The federal Courts of Appeals are split on whether the "fiduciary shield" doctrine is an appropriate limitation on the exercise of jurisdiction over foreign or nonresident cor-

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[9] *See* note 6 *supra.*

porate officers and directors. The Fifth, Sixth, Eighth and Tenth Circuits have adopted the doctrine. *See Ten Mile Indus. Park v. Western Plains Serv.*, 810 F.2d 1518, 1527 (10th Cir. 1987); *Wilshire Oil Co. v. Riffe*, 409 F.2d 1277, 1279-83 (10th Cir. 1969); *Arkansas Rice Growers v. Alchemy Indus., Inc.*, 797 F.2d 565, 574 (8th Cir. 1986); *Stuart v. Spademan*, 772 F.2d 1185, 1197 (5th Cir. 1985); *Weller v. Cromwell Oil Co.*, 504 F.2d 927, 929-31 (6th Cir. 1974).[10] The Fourth and Eleventh Circuits have applied the doctrine, but only where a plaintiff's claims involve acts taken by corporate officers or directors in their official capacities outside of the forum. *See Columbia Briargate Co. v. First Nat'l Bank, supra*, 713 F.2d at 1064 (corporate officer must perform acts in forum in order to be subject to personal jurisdiction); *Delong Equip. Co. v. Washington Mills Abrasive Co.*, 840 F.2d 843, 851-52 (11th Cir. 1988) (following *Colombia Briargate*). By contrast, the Second and Ninth Circuits have rejected the "fiduciary shield" doctrine, ruling that corporate officers or directors are subject to personal jurisdiction based solely on acts taken in their corporate capacities. *See Davis v. Metro Prods., Inc.*, 885 F.2d 515, 521-22 (9th Cir. 1989); *Retail Software Servs., Inc. v. Lashlee*, 854 F.2d 18, 22-24 (2nd Cir. 1988).[11]

Various state high courts are also in conflict regarding the application of the "fiduciary shield" doctrine. For example, Florida, Illinois and Iowa have adopted the doctrine, albeit without discussing whether it is compelled by federal due

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[10] *Cf. Home-Stake Production Co. v. Talon Petroleum*, 907 F.2d 1012, 1017 (10th Cir. 1990) (describing doctrine as "equitable"); *In re Application To Enforce Subpoenas Duces Tecum, supra*, 87 F.3d at 418 (rejecting doctrine under *Calder* in context of federal statute authorizing nationwide service of process, but not discussing prior Tenth Circuit cases).

[11] *But see Forsythe v. Overmyer*, 576 F.2d 779, 783-84 (9th Cir. 1978) (approving doctrine; not discussed in *Davis*).

process concerns. *See Doe v. Thompson,* 620 So. 2d 1004, 18 Fla. L. Weekly 5339 (Fla. 1993); *Rollins v. Ellwood,* 565 N.E.2d 1302, 141 Ill. 2d 244 (Ill. 1990); *Whalen v. Connelly,* 545 N.W.2d 284 (Iowa 1996). However, Alabama, Nebraska, New Hampshire, New York and Wisconsin have rejected the doctrine. *See Sudduth v. Howard,* 646 So. 2d 664 (Ala. 1994) (as to employees); *Crystal Clear Optical, Inc. v. Silver,* 531 N.W.2d 535, 247 Neb. 981 (Neb. 1995); *Estabrook v. Wetmore,* 529 A.2d 956, 129 N.H. 520 (N.H. 1987); *Kreutter v. McFadden Oil Corp.,* 522 N.E.2d 40, 71 N.Y.2d 460 (N.Y. 1988); *Oxmans' Erwin Meat Co. v. Blacketer,* 273 N.W.2d 285, 86 Wisc. 2d 683 (Wis. 1979). In California, while the state's highest court has not spoken on the issue, the courts of appeal are in conflict.[12]

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[12]California's Second and Third Appellate Districts have applied the doctrine. *See Mihlon v. Superior Court,* 169 Cal. App. 3d 703, 715, 215 Cal. Rptr. 442 (1985); *Ruger v. Superior Court,* 118 Cal. App. 3d 427, 432-34, 173 Cal. Rptr. 302 (1981); *Shearer v. Superior Court,* 70 Cal. App. 3d 424, 430, 138 Cal. Rptr. 824 (1977); *Arnesen v. Raymond Lee Org., Inc.,* 31 Cal. App. 3d 991, 996, 107 Cal. Rptr. 744 (1973). California's First Appellate District has reached the opposite conclusion. *See Seagate Technology v. A.J. Kogyo Co.,* 219 Cal. App. 3d 696, 703, 268 Cal. Rptr. 586 (1990); *Taylor-Rush v. Multitech Corp.,* 217 Cal. App. 3d 103, 118, 265 Cal. Rptr. 672 (1990).

CONCLUSION

The Court should grant this petition for certiorari.

Dated: December 5, 1996

Respectfully submitted,

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APPENDIX A

[Filed October 30, 1996]

SECOND APPELLATE DISTRICT,
DIVISION ONE NO. B105349

S056802

IN THE SUPREME COURT OF CALIFORNIA

T.S. LIN,
Petitioner
v.
LOS ANGELES COUNTY SUPERIOR COURT,
Respondent;
CAROL KO,
Real Party in Interest.

Application for stay and petition for review DENIED.

[GEORGE]
Chief Justice

APPENDIX B

[Filed October 9, 1996]

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
DIVISION ONE

T.S. LIN,
Petitioner,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent;
CAROL KO *et al.*,
Real Parties in Interest.

B105349
(L.A.S.C. No. BC116763)
(GEORGE P. SCHIAVELLI, *Judge*)

ORDER

THE COURT*

The petition for writ of mandate, filed September 16, 1996; the opposition thereto, filed September 23, 1996; and the reply to the opposition, filed September 26, 1996, have been read and considered.

The petition is denied.

[ORTEGA, J.]	[VOGEL (M), J.]	[MASTERSON, J.]
*ORTEGA, Acting P.J.	VOGEL, (Miriam A.), J.	MASTERSON, J.

APPENDIX C

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

Department 56
HON. GEORGE P. SCHIAVELLI, *Judge*

TATUNG COMPANY OF AMERICA, INC.
Plaintiff,
vs.
CHIEH SUN; DANIEL SUN; *Etc., et al.,*
Defendants.

Superior Court Case No. BC 116763

REPORTER'S TRANSCRIPT
September 6, 1996

* * * *

THE COURT: On the Tatung matters.

* * * *

THE COURT: All right. As I have it here, the motions I have are with respect to the quashing the service . . .

With respect to the tentative, they are as follows:

* * * *

As to the cross-defendant T.S. Lin on both motions, deny.

In all of those cases, I believe there are sufficient facts alleged to establish special jurisdiction, not general jurisdiction.

* * * *

MR. TUGGY [counsel for Petitioner Lin and Tatung America]: On the motion to quash by T.S. Lin, the tentative was to deny. I take it by the tentative that this Court is not applying the fiduciary shield doctrine?

THE COURT: I don't think it's applicable here.

MR. TUGGY: And I think that argument has been fully briefed in the papers.

THE COURT: Thank you.

MR. TUGGY: It may be, your honor, I think the expectation would be that we would test in the Court of Appeal that —

THE COURT: Sure.

MR. TUGGY: — Question, and our request is that the obligation of T.S. Lin to respond to the complaint be stayed until the Court of Appeal determined whether the fiduciary doctrine shall or shall not apply in this matter.

MR. HUANG [counsel for certain real parties in interest]: Your honor, there's absolutely no basis for a stay, if this case is going to proceed accordingly, and at this point in time, it's been delayed long enough.

Furthermore, I think there is a statutory provision which, perhaps, would settle this whole thing about the corporate — the fiduciary shield at civil code section 2343 which actually says that an agent is liable as its principal to certain parties when its acts are wrongful in their nature, and I think that's totally emasculated and that would totally wipe out the fiduciary shield principal.

THE COURT: I think here, I'm not inclined to stay proceedings. I'll give you 40 days to answer. That should give you time, if you want to file some emergency writ and ask the Court of Appeal for a stay. I think you've got ample time. I mean, you have briefed this extensively.

I'm certainly not proposing, nor would I impose on the Court of Appeal that they get everything you filed, but it seems to me on that issue, that is one that can be put together for a writ to the Court of Appeal fairly quickly.

Having had a good deal of appellate experience myself, I can remember the turn around times on those, so I think that will give you adequate time to get a writ up there and request an immediate stay from the Court, and then if the Court of Appeal determines a stay is appropriate, I have no problem. I think 40 days will give you enough time to prepare, if the Court of Appeal doesn't deal with your writ forthwith. Okay.

MR. TUGGY: Thank you.

THE COURT: On all of them, I'll give you 45 days to answer.

MR. PETERSON [counsel for Petitioner Lin and Tatung America]: You said 40 and then 45.

THE COURT: Gee, if I keep going, it will be up to 50 and you'll have time for an appeal.

We'll say 45.

* * * *

THE COURT: . . . . The motion of Mr. Lin and both motions to quash are denied. 45 days to answer, which should give you time to get your materials to the Court of appeal.

* * * *

THE COURT: Okay. What a shock

Back on the record.

I'm going to set the trial for May 5, 9:30.

Obviously, depending on how discovery goes, if it becomes clear that that date is not going to be able to stick, we'll deal with it. But I want a date certain at this point. We'll hold that date, and let's just see how things go. I want this thing moving.

So May 5, 9:30.

Final status conference, 25th of April. April 25th at 8:30.

I'm going to set it for a status conference re mediation, slash, arbitration . . . .

THE COURT: Set it for, say, October 24, a couple of weeks to figure out whatever he does. So we'll set it for October 24, 8:30 for a status conference re mediation/ arbitration.

MR. PETERSON: Your honor, could we at that time also address the propriety of the trial date in light of the developments between now and then?

THE COURT: Sure.

* * * *

[PROCEEDINGS CONCLUDED]